



**NASD**®  
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REGULATION

NASD Regulation, Inc.  
Corporate Financing Department  
1801 K Street, NW  
Washington, DC 20006  
(202) 974-2700

December 17, 1999

Katherine A. England, Assistant Director  
Division of Market Regulation  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549-1001

Re: **SR-NASD-99-74**  
Exemption From The Corporate Financing Rule For Interval Funds

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed herewith is the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register. The proposed rule change is being filed for accelerated approval upon publication of the proposed rule change for comment under Section 19(b)(2) of the Securities Exchange Act of 1934.

If you have any questions, please contact Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, at (202) 974-2747; e-mail rothwels@nasd.com. The fax number of the Corporate Financing Department is (202) 974-2732.

Very truly yours,

Alden S. Adkins  
Senior Vice President & General Counsel

Attachment

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D. C.

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Form 19b-4

Proposed Rule Change

by

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

Pursuant to Rule 19b-4 under the  
Securities Exchange Act of 1934

**1. Text of Proposed Rule Change**

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"), the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), is filing with the Securities and Exchange Commission ("SEC") proposed rule changes to Rules 2710 and 2830 of the Conduct Rules of the Association. Below is the text of the proposed rule changes. Proposed new language is underlined; proposed deletions are in brackets.

**2710. Corporate Financing Rule - Underwriting Terms and Arrangements**

(a) No change.

**(b) Filing Requirements**

(1) - (7) No change.

**(8) Exempt Offerings**

Notwithstanding the provisions of subparagraph (1) above, the following offerings are exempt from this Rule, Rule 2720, and Rule 2810. Documents and information relating to the following offerings need not be filed for review:

(A) - (B) No change.

(C) securities of investment companies registered under the Investment Company Act of 1940, as amended, except securities of a management company defined as a "closed-end company" in Section 5(a)(2) of that Act that does not make periodic repurchase offers pursuant to Rule 23c-3(b) adopted thereunder;

(D) - (J) No change.

(9) - (12) No change.

(c) - (d) No change.

\* \* \*

### **2830. Investment Company Securities**

(a) - (c) No change.

#### **(d) Sales Charge**

No member shall offer or sell the shares of any open-end investment company, any closed-end investment company that makes periodic repurchase offers pursuant to Rule 23c-3(b) under the 1940 Act, or any “single payment” investment plan issued by a unit investment trust (collectively “investment companies”) registered under the 1940 Act if the sales charges described in the prospectus are excessive. Aggregate sales charges shall be deemed excessive if they do not conform to the following provisions:

(1) - (5) No change.

(e) - (i) No change.

#### **(j) Repurchase from Dealer**

No member who is a principal underwriter of a security issued by an open-end [management] investment company or a closed-end investment company that makes periodic repurchase offers pursuant to Rule 23c-3(b) under the 1940 Act shall repurchase such security, either as principal or as agent for the issuer, from a dealer acting as principal who is not a party to a sales agreement with a principal underwriter, nor from any investor, unless such dealer or investor is the record owner of the security so tendered for repurchase. No member who is a principal underwriter shall participate in the offering or in the sale of any

such security if the issuer voluntarily redeems or repurchases its securities from a dealer acting as principal who is not a party to such a sales agreement nor from any investor, unless such dealer or investor is the record owner of the security so tendered for repurchase.

Nothing in this paragraph shall relate to the compulsory redemption of any security upon presentation to the issuer pursuant to the terms of the security.

Nothing in this Rule shall prevent any member, whether or not a party to a sales agreement, from selling any such security for the account of a record owner to the underwriter or issuer at the bid price next quoted by or for the issuer and charging the investor to a reasonable charge for handling the transaction, provided that such member discloses to such record owner that direct redemption of the security can be accomplished by the record owner without incurring such charges.

**(k) - (n)** No change.

## **2. Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by the Board of Directors of NASD Regulation at its meeting on December 8, 1999, which authorized the filing of the rule change with the SEC. The Nasdaq Stock Market has been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by the NASD to its Subsidiaries. The NASD Board of Governors had an opportunity to review the proposed rule change at its meeting on December 9, 1999. No other action by the NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the By-Laws permits the NASD Board of Governors to adopt NASD amendments to NASD Rules without recourse to the membership for approval.

Questions regarding this rule filing may be directed to Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, at (202) 974-2747.

**3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

**(a) Purpose**

NASD Conduct Rule 2710 (“Corporate Financing Rule”) regulates the underwriting terms and other arrangements of public offerings of securities. Subparagraph (b)(8)(C) of the Corporate Financing Rule provides that securities of investment companies registered under the Investment Company Act of 1940 (“1940 Act”) are exempt from filing and compliance with the Corporate Financing Rule, unless the offering is of securities of a management company defined as a “closed-end” company in Section 5(a)(2) of the 1940 Act (“closed-end funds”).<sup>1</sup> Thus, closed-end funds are subject to the filing requirements, filing fees, and regulations of the Corporate Financing Rule. Open-end investment management companies (“open-end funds”) that continuously offer redeemable securities are exempt from filing with NASD Regulation under the Corporate Financing Rule and a member’s receipt of their sales charges is regulated under NASD Conduct Rule 2830.

Closed-end funds are subject to the core provisions of the 1940 Act that also apply to open-end funds, including prohibitions on affiliated transactions, obligations requiring shareholder approval of advisory contracts, anti-pyramiding restrictions, and board composition requirements. However, such funds are not subject to other 1940 Act restrictions applicable to open-end funds, including limitations on leverage and obligations

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<sup>1</sup> Section 5(a)(1) of the 1940 Act defines “open-end company” as “a management company which is offering for sale or has outstanding any redeemable security for which it is the issuer.” Section 5(a)(2) of the 1940 Act defines “closed-end company” as “any management company other than an open-end company.”

pertaining to the liquidity of investments. The Corporate Financing Rule, and its predecessor rule, has long been applied to members' sales of the securities of closed-end funds on the basis that closed-end fund offerings are structured and marketed in a manner that is more similar to and competitive with corporate securities offerings than to open-end funds. At the time the Corporate Financing Rule was adopted, closed-end funds conducted offerings of a fixed number of common shares at specified times; priced their shares periodically; limited sales compensation of broker/dealers to a discount from a fixed offering price; did not redeem their securities; and generally listed their securities on a securities market.

Certain closed-end funds, commonly known as "interval funds," have developed a hybrid structure in which they engage in continuous offerings of their securities under SEC Rule 415; price their shares daily; pay broker/dealers initial and continuing compensation that meets the sales charge limitations of Rule 2830; do not list their securities on a securities market; and redeem shares by making periodic self-tenders in compliance with Rule 23c-3(b) of the 1940 Act. Rule 23c-3(b) requires that the interval fund establish as a fundamental policy, changeable only by a majority vote of the outstanding voting securities of the company, that it will make periodic repurchase offers. Because the shares of interval funds are not redeemable on a daily basis, they are nonetheless classified as "closed-end" under the 1940 Act.

In Notice to Members 98-81 (October, 1998), NASD Regulation requested public comment on whether any of the NASD's rules are obsolete. One commenter, the Investment Company Institute, proposed exempting interval funds from regulation by the Corporate Financing Rule. In addition, the Corporate Financing Department has received a rulemaking petition requesting an exemption from the Corporate Financing Rule for interval funds.

NASD Regulation believes that the distribution of interval fund shares is conducted and financed in a manner more similar to that used by open-end management investment companies than the method used by traditional closed-end funds. Therefore, the calculation of members' compensation for the distribution of interval fund shares is more properly regulated by the sales charge rule of Rule 2830, rather than by the limitations on underwriting compensation in the Rule 2710.

Consequently, NASD Regulation proposes to amend Rules 2710 and 2830 to exempt interval funds from the filing requirements, filing fees, and regulations of the Corporate Financing Rule and to, instead, subject them to the NASD Conduct Rule 2830, which regulates the distribution and sales charges of open-end funds.<sup>2</sup> The proposed amendment to Rule 2710 would amend subparagraph (b)(8)(C) to provide that closed-end fund offerings are only required to be filed if the fund does not make periodic repurchase offers pursuant to Rule 23c-3(b). The proposed amendment to Rule 2830 would amend paragraphs (d) and (j) to provide that interval funds are subject to the provisions regulating sales charges and the repurchases of fund securities.

**(b) Statutory Basis**

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect

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<sup>2</sup> Interval funds are distinguished from other hybrid closed-end funds that make periodic self-tenders in compliance with Rule 13e-4 and Schedule 13E-4 under the Act ("tender offer funds"). Such tender offer funds are not required to establish as a fundamental policy that they will make periodic repurchases, as required by Rule 23c-3(b) under the 1940 Act. The rule change proposed herein would not exempt tender offer funds from Rule 2710. However, NASD Regulation will consider individual requests for exemption under the Rule 9600 series from the requirements of the Corporate Financing Rule for such tender offer funds. *See*, Exemption granted October 29, 1999 under "Corporate Financing Rule - Rule 2710" at [www.nasd.com](http://www.nasd.com).

investors and the public interest. NASD Regulation believes that the calculation of members' compensation for the distribution of interval fund shares is more properly regulated by the sales charge rule of Rule 2830, rather than by the limitations on underwriting compensation in the Rule 2710.

**4. Self-Regulatory Organization's Statement on Burden on Competition**

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

**5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

NASD Notice to Members 98-81 (October, 1998) requested comment on whether any NASD rules are obsolete. A copy of the Notice to Members is attached as Exhibit 2. A copy of the comment letter received from the Investment Company Institute in response to the Notice that requested the amendments proposed herein is attached as Exhibit 3. A copy of a petition for rulemaking requesting the amendments proposed herein submitted by the law firm of Stradley Ronon Stevens & Young on behalf of Franklin/Templeton Distributors, Inc. is attached as Exhibit 4.

**6. Extension of Time Period for Commission Action**

NASD Regulation does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

NASD Regulation requests the Commission to find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after its publication in

the Federal Register in order to eliminate the unnecessary filing, filing fees, and regulation of interval funds under the Corporate Financing Rule. NASD Regulation believes that the proposed rule change is not controversial because interval funds that currently file offerings with the Corporate Financing Department under Rule 2710, also structure the offering sales charges in compliance with Rule 2830. Moreover, the proposed rule change has been requested by industry members, as represented by the Investment Company Institute. In addition; the proposed rule change would maintain the protection of investors by subjecting interval fund offerings to the sales charge limitations of Rule 2830. Finally, the proposed rule change would eliminate the burden on competition between interval funds and open-end funds that results from subjecting such interval funds to the compensation limitations of the Corporate Financing Rule. Instead, interval fund offerings would be regulated under a rule that is better designed to address distribution practices and financing by such funds.

Because NASD Regulation believes that the proposed rule change is not controversial; maintains protection of investors by subjecting interval fund offerings to Rule 2830; and eliminates a burden on competition by regulating interval fund offerings under a rule that is better designed to address distribution practices and financing by such funds, NASD Regulation requests the Commission to accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the Federal Register.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

9. **Exhibits**

1. Completed notice of proposed rule change for publication in the Federal Register.
2. NASD Notice to Members 98-91 (October, 1998).
3. Comment of the Investment Company Institute received in response to NASD Notice to Members 98-91 (October, 1998).
4. Petition for rule making submitted with respect to proposed rule change.

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD Regulation has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD REGULATION, INC.

BY: \_\_\_\_\_  
Alden S. Adkins  
Senior Vice President & General Counsel

Date: December 17, 1999

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34- ; File No. SR-NASD-99-74)**

**Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to an Exemption From the Corporate Financing Rule for Closed-End Management Companies That Make Periodic Repurchases of Their Securities under Rule 23c-3(b) of the Investment Company Act of 1940**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>3</sup> and rule 19b-4 thereunder,<sup>4</sup> notice is hereby given that on December 17, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

**I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE**

NASD Regulation is proposing to amend Rules 2710 and 2830 of the Conduct Rules of the NASD to exempt public offerings by closed-end investment management companies that make periodic tender offers for their securities in compliance with Rule 23c-3(b) of the Investment Company Act of 1940 from the filing requirements and limitations on

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<sup>3</sup> 15 U.S.C. 78s(b)(1).

<sup>4</sup> 17 CFR 240.19b-4.

underwriting compensation of Rule 2710 and, instead, subject such offerings to the sales charge limitations of Rule 2830. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

**2710. Corporate Financing Rule - Underwriting Terms and Arrangements**

(a) No change.

**(b) Filing Requirements**

(1) - (7) No change.

**(8) Exempt Offerings**

Notwithstanding the provisions of subparagraph (1) above, the following offerings are exempt from this Rule, Rule 2720, and Rule 2810. Documents and information relating to the following offerings need not be filed for review:

(A) - (B) No change.

(C) securities of investment companies registered under the Investment Company Act of 1940, as amended, except securities of a management company defined as a “closed-end company” in Section 5(a)(2) of that Act that does not make periodic repurchase offers pursuant to Rule 23c-3(b) adopted thereunder;

(D) - (J) No change.

(9) - (12) No change.

(c) - (d) No change.

\* \* \*

**2830. Investment Company Securities**

(a) - (c) No change.

**(d) Sales Charge**

No member shall offer or sell the shares of any open-end investment company, any closed-end investment company that makes periodic repurchase offers pursuant to Rule 23c-3(b) under the 1940 Act, or any “single payment” investment plan issued by a unit investment trust (collectively “investment companies”) registered under the 1940 Act if the sales charges described in the prospectus are excessive. Aggregate sales charges shall be deemed excessive if they do not conform to the following provisions:

(1) - (5) No change.

(e) - (i) No change.

**(j) Repurchase from Dealer**

No member who is a principal underwriter of a security issued by an open-end [management] investment company or a closed-end investment company that makes periodic repurchase offers pursuant to Rule 23c-3(b) under the 1940 Act shall repurchase such security, either as principal or as agent for the issuer, from a dealer acting as principal who is not a party to a sales agreement with a principal underwriter, nor from any investor, unless such dealer or investor is the record owner of the security so tendered for repurchase. No member who is a principal underwriter shall participate in the offering or in the sale of any such security if the issuer voluntarily redeems or repurchases its securities from a dealer acting as principal who is not a party to such a sales agreement nor from any investor, unless such dealer or investor is the record owner of the security so tendered for repurchase.

Nothing in this paragraph shall relate to the compulsory redemption of any security upon presentation to the issuer pursuant to the terms of the security.

Nothing in this Rule shall prevent any member, whether or not a party to a sales agreement, from selling any such security for the account of a record owner to the underwriter or issuer at the bid price next quoted by or for the issuer and charging the investor to a reasonable charge for handling the transaction, provided that such member discloses to such record owner that direct redemption of the security can be accomplished by the record owner without incurring such charges.

**(k) - (n)** No change.

## **II. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE PURPOSE OF, AND STATUTORY BASIS FOR, THE PROPOSED RULE CHANGE**

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

### **A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

#### **1. Purpose**

NASD Conduct Rule 2710 (“Corporate Financing Rule”) regulates the underwriting terms and other arrangements of public offerings of securities. Subparagraph (b)(8)(C) of the Corporate Financing Rule provides that securities of investment companies registered under

the Investment Company Act of 1940 (“1940 Act”) are exempt from filing and compliance with the Corporate Financing Rule, unless the offering is of securities of a management company defined as a “closed-end” company in Section 5(a)(2) of the 1940 Act (“closed-end funds”).<sup>5</sup> Thus, closed-end funds are subject to the filing requirements, filing fees, and regulations of the Corporate Financing Rule. Open-end investment management companies (“open-end funds”) that continuously offer redeemable securities are exempt from filing with NASD Regulation under the Corporate Financing Rule and a member’s receipt of their sales charges is regulated under NASD Conduct Rule 2830.

Closed-end funds are subject to the core provisions of the 1940 Act that also apply to open-end funds, including prohibitions on affiliated transactions, obligations requiring shareholder approval of advisory contracts, anti-pyramiding restrictions, and board composition requirements. However, such funds are not subject to other 1940 Act restrictions applicable to open-end funds, including limitations on leverage and obligations pertaining to the liquidity of investments. The Corporate Financing Rule, and its predecessor rule, has long been applied to members’ sales of the securities of closed-end funds on the basis that closed-end fund offerings are structured and marketed in a manner that is more similar to and competitive with corporate securities offerings than to open-end funds. At the time the Corporate Financing Rule was adopted, closed-end funds conducted offerings of a fixed number of common shares at specified times; priced their shares periodically; limited sales compensation of broker/dealers to a discount from a fixed offering price; did not redeem their securities; and generally listed their securities on a securities market.

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<sup>5</sup> Section 5(a)(1) of the 1940 Act defines “open-end company” as “a management company which is offering for sale or has outstanding any redeemable security for which it is the issuer.” Section 5(a)(2) of the 1940 Act defines “closed-end company” as “any management company other than an open-end company.”

Certain closed-end funds, commonly known as “interval funds,” have developed a hybrid structure in which they engage in continuous offerings of their securities under SEC Rule 415; price their shares daily; pay broker/dealers initial and continuing compensation that meets the sales charge limitations of Rule 2830; do not list their securities on a securities market; and redeem shares by making periodic self-tenders in compliance with Rule 23c-3(b) of the 1940 Act. Rule 23c-3(b) requires that the interval fund establish as a fundamental policy, changeable only by a majority vote of the outstanding voting securities of the company, that it will make periodic repurchase offers. Because the shares of interval funds are not redeemable on a daily basis, they are nonetheless classified as “closed-end” under the 1940 Act.

In Notice to Members 98-81 (October, 1998), NASD Regulation requested public comment on whether any of the NASD’s rules are obsolete. One commenter, the Investment Company Institute, proposed exempting interval funds from regulation by the Corporate Financing Rule. In addition, the Corporate Financing Department has received a rulemaking petition requesting an exemption from the Corporate Financing Rule for interval funds. NASD Regulation believes that the distribution of interval fund shares is conducted and financed in a manner more similar to that used by open-end management investment companies than the method used by traditional closed-end funds. Therefore, the calculation of members’ compensation for the distribution of interval fund shares is more properly regulated by the sales charge rule of Rule 2830, rather than by the limitations on underwriting compensation in the Rule 2710.

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Consequently, NASD Regulation proposes to amend Rules 2710 and 2830 to exempt interval funds from the filing requirements, filing fees, and regulations of the Corporate Financing Rule and to, instead, subject them to the NASD Conduct Rule 2830, which regulates the distribution and sales charges of open-end funds.<sup>6</sup> The proposed amendment to Rule 2710 would amend subparagraph (b)(8)(C) to provide that closed-end fund offerings are only required to be filed if the fund does not make periodic repurchase offers pursuant to Rule 23c-3(b). The proposed amendment to Rule 2830 would amend paragraphs (d) and (j) to provide that interval funds are subject to the provisions regulating sales charges and the repurchases of fund securities.

## **2. Statutory Basis**

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)<sup>7</sup> of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the calculation of members' compensation for the distribution of interval fund shares is more properly regulated by the sales charge rule of Rule 2830, rather than by the limitations on underwriting compensation in the Rule 2710.

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<sup>6</sup> Interval funds are distinguished from other hybrid closed-end funds that make periodic self-tenders in compliance with Rule 13e-4 and Schedule 13E-4 under the Act ("tender offer funds"). Such tender offer funds are not required to establish as a fundamental policy that they will make periodic repurchases, as required by Rule 23c-3(b) under the 1940 Act. The rule change proposed herein would not exempt tender offer funds from Rule 2710. However, NASD Regulation will consider individual requests for exemption under the Rule 9600 series from the requirements of the Corporate Financing Rule for such tender offer funds. *See*, Exemption granted October 29, 1999 under "Corporate Financing Rule - Rule 2710" at [www.nasd.com](http://www.nasd.com).

<sup>7</sup> 15 U.S.C. § 78q-3.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

**C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

NASD Notice to Members 98-81 (October, 1998) requested comment on whether any NASD rules are obsolete. A copy of the comment letter received from the Investment Company Institute in response to the Notice that requested the amendments proposed herein was filed with the proposed rule change. A copy of a petition for rulemaking requesting the amendments proposed herein submitted by the law firm of Stradley Ronon Stevens & Young on behalf of Franklin/Templeton Distributors, Inc. was also attached to the proposed rule change.

**III. SOLICITATION OF COMMENTS**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the

NASD. All submissions should refer to file No. SR-NASD-99-74 and should be submitted by [insert date 21 days from the date of publication].

**IV. COMMISSION'S FINDINGS AND ORDER GRANTING ACCELERATED APPROVAL OF THE PROPOSED RULE CHANGE**

The Commission finds that the NASD's proposal is consistent with the Act and the rules and regulations thereunder applicable to a registered national securities association. Specifically, the provisions of Section 15A(b)(6) of the Act which requires, in part, that an association have rules that are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principals of trade, and in general, to protect investors. The Commission believes that the NASD's proposal is consistent with Section 15A(b)(6) of the Act in that the calculation of members' compensation for the distribution of interval fund shares is more properly regulated by the sales charge rule of Rule 2830, rather than by the limitations on underwriting compensation in the Rule 2710.

The Commission finds that the proposed rule change is not controversial because interval funds that currently file offerings with the Corporate Financing Department under Rule 2710, also structure the offering sales charges in compliance with Rule 2830. Moreover, the proposed rule change has been requested by industry members, as represented by the Investment Company Institute. In addition; the proposed rule change would maintain the protection of investors by subjecting interval fund offerings to the sales charge limitations of Rule 2830. Finally, the proposed rule change would eliminate the burden on competition between interval funds and open-end funds that results from subjecting such interval funds to the compensation limitations of the Corporate Financing Rule. Instead, interval fund

offerings would be regulated under a rule that is better designed to address distribution practices and financing by such funds.

Because the proposed rule change is not controversial, maintains protection of investors by subjecting interval fund offerings to Rule 2830, and eliminates a burden on competition by regulating interval fund offerings under a rule that is better designed to address distribution practices and financing by such funds, the Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of filing thereof in the Federal Register.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Jonathan G. Katz  
Secretary

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<sup>8</sup> 17 U.S.C. §78s(B)(2) (1988).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT NO. 2**  
**NASD NOTICE TO MEMBERS 98-81**

**EXHIBIT NO. 3**  
**COMMENT LETTER OF**  
**INVESTMENT COMPANY INSTITUTE**

**EXHIBIT NO. 4**

**PETITION FOR RULEMAKING**  
**FROM**  
**THE LAW FIRM OF STRADLEY RONON STEVENS & YOUNG**  
**ON BEHALF OF**  
**FRANKLIN/TEMPLETON DISTRIBUTORS, INC.**